

2012 WL 3202358 (S.D.Cal.) (Trial Motion, Memorandum and Affidavit)
United States District Court, S.D. California.

Albert SANCHEZ Sr., Plaintiff,

v.

Albert SANCHEZ Jr., Garnett McKeen Laboratory, Inc., El-Gen, LLC,
Amarc Enterprises, Inc., and Alo Investments, LLC; Defendants.

No. 10-CV-1628 JLS(MDD).
June 14, 2012.

**Plaintiff's Opposition to Defendants' Motion in Limine to
Exclude Evidence of Alleged Elder Abuse and Identity Theft**

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Judge: Hon. Janis L. Sammartino.

MOTION IN LIMINE 2 OF 6

Courtroom: 6

Hearing Date: June 28, 2012

Trial Date: July 9, 2012

Plaintiff, Albert Sanchez, Sr. by and through his attorney of record, Kevin Mirch, hereby opposes Defendants motion in limine for an order instructing all parties, their counsel and witnesses that any and all evidence, documents, testimony, or arguments relating to alleged elder abuse and identity theft is not admissible.

I. Introduction

Defendants Motion in Limine No. 2 asks the court to exclude all evidence, documents, testimony, or arguments relating to Elder Abuse and Identity Theft. In their motion, Defendants set forth several reasons to exclude the aforementioned evidence: (1) Plaintiff has not plead Elder Abuse or Identity Theft; (2) Relevance under FRE 402; FRE 403.

Evidence of elder abuse and identity theft is relevant for impeachment (FRE 607, 608), and is subject to the exceptions found under FRE 404(b) (i.e., knowledge, absence of mistake, motive, planning, preparation, identity, and intent). Accordingly, a general prohibition on this evidence without considering the exceptions to the general prohibition would be improper. *See United States v. Denton*, 547 F. Supp. 16, 17 (E.D. Tenn. 1982). Defendants' motions in limine do not specifically address these exceptions and must fail for that reason. FRE 607, 608, and 404(b) all provide legitimate exceptions to the general prohibition found in FRE 404(a). Likewise, the FRE 404(b) exceptions to FRE 404(a) general prohibition are not unduly prejudicial where literally millions of dollars are missing from Dr. Sanchez's personal and business bank accounts; property was titled in the Defendants' names or their intermediary entities instead of Dr. Sanchez's name; the illegal transfer of Dr. Sanchez's business was made creating a corporation of nearly the same name used by Dr. Sanchez (i.e., AMARC Enterprises was created in place

of AMARC) which was then used to literally continue operating Dr. Sanchez's business and to obtain an illegal trademark for Poly-MVA.

Dr. Sanchez is in his late 70's. He has been the subject of **abuse** by conversion, mental coercion, and physical **abuse**. Dr. Sanchez is suffering from poor health (e.g., heart attacks, diabetes). **Elder abuse** and identity theft are relevant to how the Defendants could literally steal all of his assets by using a maze of corporations). Because Dr. Sanchez is **elderly** and has health issues he worked from his home. Dr. Sanchez believed that his assets and the revenues generated by AMARC were being placed into bank accounts that he controlled. Dr. Sanchez only allowed his children to work for AMARC because he controlled the corporation and had not given up control of the company to anyone. Defendants could not have been successful in stealing Dr. Sanchez's assets unless they used Dr. Sanchez's individual and corporate name to accomplish the same. Dr. Sanchez's formal name is Albert Sanchez. Defendant Sanchez's name is Albert Sanchez, Jr. Sanchez, Jr. regularly signed Dr. Sanchez's name to transfer money and other property to his own ownership. Likewise, Dr. Sanchez owned a corporation that went by the name "AMARC". Sanchez, Jr., set up a corporation called "AMARC Enterprises" to sell POLY-MVA. Prior to July 2002, when Sanchez, Jr., went to work for AMARC, AMARC Enterprises had never sold any POLY-MVA. It illegally sold the product under that name as Dr. Sanchez owned the exclusive rights to POLY-MVA from at least 1995-2008. Dr. Sanchez did not notice the difference in ownership of his assets or corporation until shortly before this action was brought.

II. Legal Analysis.

In U.S. Denton, the Defendants' motion in limine was denied because:

Court ha[d] no way of knowing (1) whether any or all of the aforementioned evidence will be offered at trial, (2) if so, for what purpose or purposes, (3) whether, if offered, some or all of such evidence might be admissible for one or more purposes, and (4) if admissible, whether its probative value might be outweighed by its prejudicial effect.

See *United States v. Denton*, 547 F. Supp. 16, 17 (E.D. Tenn. 1982); see also Fed. R. Evid. 103.

Here, the Defendants are attempting to exclude evidence and testimony without specifying which evidence or testimony they are moving on, this is not proper and should not be entertained by the Court.

It is necessary to point out how this scheme to steal all of Dr. Sanchez's assets occurred. This includes false statements made in the Trademark application regarding when and who placed POLY-MVA into commerce and when. In Sanchez, Jr.'s, deposition he admitted he had no rights to sell the product from at least 1995-2008. See *Exhibit B*, Deposition testimony of Sanchez, Jr. Clearly, Dr. Sanchez's age and infirmities are relevant. Likewise, his assets, including Trademark rights to POLY-MVA were **abused** by the use of identity theft methods (i.e., the use of his individual and corporate names). Since Dr. Sanchez was confined, due to age and illness to work at home, while his sir and corporate names were misused to steal his assets, those issues should be admitted at trial. That conduct constitutes **elder abuse** by identity theft. Defendants' motion to exclude this evidence should be denied.

III. Argument:

Defendants' Motion is an improper attempt to obviate significant facts admitted in nearly all cases (e.g., age). Moreover, the Motion in Limine is improper in asserting that Plaintiffs have not alleged the **Elder Abuse** and Identity Theft. That is simply not the case.

A. Evidence of Identity Theft and Elder Abuse should not be Excluded under FRCP Rule 8(f) and the Defendants will not be prejudiced.

The Plaintiff has most certainly pled **elder abuse** and identify theft. This entire action is based upon the notion that Albert Jr filed for a trademark that was rightfully his father's trademark. Albert Jr used his fathers trademark and other marks confusingly similar so that the public would not know that it was not Albert Sr. *See* PI's FAC 22:5-8 (Albert Jr. has a history of giving Albert Sr. documents to sign, after which Albert Jr. would destroy the signed documents, and then submit new documents for appropriate filing under Albert Jr.'s name); *see also* 3:12-13 (Albert Sanchez, Jr. suddenly attempted to steal all of his father's business away from him by secretly forming his own "AMARC" entity); *see also* 4: 14-16 (The relevant fact for the focus of this particular complaint is that Albert Sanchez, Jr. fraudulently claimed to be the owner of a trademark that he absolutely knew was owned by his father, Albert Sanchez, Sr., under common law); *see also* 4:20-22 (Albert Jr. has a history of giving Albert Sr. documents to sign, after which Albert Jr. would destroy the signed documents, and then submit new documents for appropriate filing under Albert Jr.'s name), etc. The Defendants argument that the issue is not contained the in pleadings is incorrect.

Additionally, fact that Albert Jr and Albert Sr have the same name, made it difficult, if not impossible for Albert Sr to discover that the trademark was filed under his son's name instead of his own name. Additionally Albert Sr's age has always been known to the parties and his vulnerability due to his age and health are at issue here in this action.

As a result of the pleadings on file herein, **elder abuse** and identify theft are most certainly at issue and evidence supporting such should not be excluded. Furthermore, the Defendants have failed to specify which evidence, documents, and/or witnesses it wishes to exclude making it impossible for the Court to properly rule on this motion. *See United States v. Denton*, 547 F. Supp. at 17.

B. Evidence of Identity Theft and Elder Abuse are Relevant

Pursuant to [Federal Rules of Evidence Rule 401](#), "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." [Fed. R. Evid. 401](#).

Here, evidence relating to identify theft and **elder abuse** are highly relevant to show how the Defendants managed to apply and obtain a trademark that was rightfully owned by the Plaintiff in this action. The evidence also shows how the Defendants were able to conceal the fact that their father did not own the trademark from the Plaintiff for so many years. Clearly this evidence has the tendency to make the Defendants' laches and statute of limitation arguments less probable.

The evidence showing the Defendants' identify theft and **elder abuse** is unquestionably relevant and should not be excluded.

C. Evidence of Identity Theft and Elder abuse are not Unfairly Prejudicial and do Not Outweigh the Probative Value

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *See Fed. R. Evid. 403*.

[Federal Rules of Evidence Rule 404](#) states, in part, the following:

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

See [Fed. R. Evid. 404](#).

Here, evidence of the Defendants' **elder abuse** and identity theft is not substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. The Defendants motion completely ignores the probative value of this evidence in proving the Defendants's opportunity and plan to conceal this information from the Plaintiff. The evidence of **elder abuse** and identity theft is necessary for the Plaintiff to defend the Defendants' affirmative defenses and for the Plaintiff to show opportunity and plan regarding the trademark infringement.

If anything this evidence's prejudicial effect is substantially outweighed by its probative value. The Plaintiff would be extremely prejudiced if this evidence were excluded.

IV. Conclusion

All facts alleged regarding Dr. Sanchez's age, **abuse** upon him, and identity theft are not only relevant and their probative value by far exceeds their prejudicial effect. The facts are significant to this action and normally admissible.

Wherefore, Plaintiffs respectfully request that this Court deny Defendants' Motion in Limine number 2.

Dated this 14th day of June, 2012.

By /s/ *Erin E. Hanson*

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